

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SONTAY T. SMOTHERMAN,

Petitioner,

v.

**Civ. No. 2:14-cv-972
Crim. No. 2:12-cr-055(3)
Judge Frost
Magistrate Judge King**

UNITED STATES OF AMERICA,

Respondent.

ORDER

Petitioner filed a motion to vacate pursuant to 28 U.S.C. § 2255 on July 23, 2014. *Motion to Vacate*, ECF No. 270. On April 24, 2015, the Magistrate Judge denied Petitioner's *Motion for Discovery*, ECF No. 281, and recommended that Petitioner's *Motion for Summary Judgment*, ECF No. 276, and *Motion for Relief from Judgment*, ECF No. 280, be denied and that the *Motion to Vacate* pursuant to 28 U.S.C. § 2255, ECF No. 270, be dismissed. *Order and Report and Recommendation*, ECF No. 287. Petitioner objected to the recommendation on May 4, 2015. *Objection*, ECF No. 289. On May 6, 2015, this Court overruled Petitioner's objection, adopted the Magistrate Judge's recommendation and dismissed the *Motion to Vacate*. *Order*, ECF No. 291. Petitioner thereafter filed amended objections to the Magistrate Judge's recommendation, *Amended Objections*, ECF No. 292, a *Motion for Plain Error Review to Report and Recommendation*, ECF No. 293, and an objection to the Magistrate Judge's denial of discovery in this case. *Objection*, ECF No. 294.

The Magistrate Judge's recommendation that the action be dismissed was based on the fact that the claims raised in Petitioner's *Motion to Vacate* had been presented to and rejected by the United States Court of Appeals for the Sixth Circuit on direct appeal. In dismissing this case,

this Court agreed with that conclusion. Nothing stated in Petitioner's subsequent objections to the Magistrate Judge's recommendation persuades the Court that the case was erroneously dismissed.

Petitioner has also now objected to the Magistrate Judge's denial of his request to conduct discovery. Because the order of the Magistrate Judge was neither clearly erroneous nor contrary to law, in light of the recommended dismissal of the action, Petitioner's objection to the Magistrate Judge's order in this regard is without merit.

Petitioner's *Amended Objections*, ECF No. 292, *Motion for Plain Error Review to Report and Recommendation*, ECF No. 293, and *Objection to the Order* of the Magistrate Judge denying Petitioner's request for discovery, ECF No. 294, are therefore **DENIED**. The Clerk is **DIRECTED** to remove these motions, as well as Petitioner's *Motion to Reconsider*, ECF No. 288, from the Court's pending motions list.

/s/ GREGORY L. FROST
GREGORY L. FROST
United States District Judge